ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Calling Party Pays Service Option in the Commercial Mobile Radio Services

WT Docket No. 97-207

COMMENTS OF CENTENNIAL CELLULAR CORP.

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Dated: December 16, 1997

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I. INTRODUCTION AND SUMMARY.

Centennial Cellular Corp. ("Centennial"), by its attorneys and pursuant to Section 1.415 of the Commission's rules, 47 C.F.R. § 1.415, submits these Comments in response to the Commission's Notice of Inquiry in this matter.[1] Centennial offers Commercial Mobile Radio Service ("CMRS") as a cellular carrier in various markets in the continental United States and as a Personal Communications Service ("PCS") provider in Puerto Rico.

Centennial is skeptical that implementing a Calling Party Pays ("CPP") option would generally promote the use of Commercial Mobile Radio Service ("CMRS") or the perception of that service as a meaningful alternative to traditional landline service, particularly in areas where landline customers have large flat-rated local calling areas. To the contrary, simple economics suggests that landline end users who can now call a CMRS customer as a "free" local call would make fewer calls — perhaps substantially fewer calls — if a separate charge were applied. Even so, different CMRS products are targeted to different customer groups, and Centennial can imagine situations in which a CMRS provider would want to offer a service where the calling party pays the CMRS provider for the call. Centennial, therefore, would

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[1] In the Matter of Calling Party Pays Service Option in the Commercial Mobile Radio Services, *Notice of Inquiry*, WT Docket No. 97-207, FCC 97-341, released October 23, 1997 ("*CPP NOI*").

support the establishment of CPP as a billing ***option*** for CMRS providers that choose to implement it.

Centennial, therefore, limits its initial comments in this matter to two points. First, as described below, the Commission clearly has jurisdiction to consider the issue and, if it so chooses, to require landline local exchange carriers with which CMRS providers interconnect to perform the necessary recording and/or billing functions to implement CPP. Second, both because of the uncertain impacts that CPP would have on the overall market acceptance of CMRS and because of certain technical difficulties for CMRS providers in implementing CPP, the Commission should limit any action in this matter to establishing CPP as an ***option*** for CMRS providers, not as a required offering.

II. THE COMMISSION HAS JURISDICTION TO CONSIDER AND IMPLEMENT NATIONAL REQUIREMENTS REGARDING "CALLING PARTY PAYS" BILLING ARRANGEMENTS FOR CMRS CALLS.

In the Notice of Inquiry in this proceeding, the Commission requests comment on the scope of its authority to require that local exchange carriers ("LECs") provide CMRS carriers with sufficient information and services such that CMRS carriers can offer CPP services, and whether the Commission has the authority under Section 332 to preempt state regulation in order to establish nationwide rules for CPP.[2]

Section 201 of the Communications Act on its face provides fully adequate authority for the Commission to require LECs to support CPP with regard to jurisdictionally interstate calls. The only possible question as to the Commission's authority arises because the bulk of LEC/CMRS calling is probably "intrastate" in nature, in that most LEC/CMRS calls originate and terminate within a single state. A review of Section 332(c)(1)(B), Section 201, and Section 2(b) of the Act, however — particularly in light of the recent decision in *Iowa Utilities*

[2] *CPP NOI* at para. 29.

Board v. FCC[3] — shows that the Commission has plenary authority to regulate the terms of LEC/CMRS interconnection, even for intrastate traffic, and that its authority over the terms and conditions of such interconnection clearly permits the Commission to require LECs either to provide billing information to, or, indeed, to bill on behalf of, CMRS providers seeking to implement CPP.

A. Section 332(c)(1)(B) Gives The Commission Authority To Regulate LEC/CMRS Interconnection In Accordance With Section 201, Irrespective Of The Jurisdictional Status Of The Traffic Affected.

The specific jurisdictional question in the Notice of Inquiry relates to requiring LECs to provide CMRS providers with information needed to bill landline end users for calls to CMRS customers. Focusing solely on billing data, however, could lead to missing the forest of Commission authority by searching for a single jurisdictional twig. In fact, the Commission has the authority to require CPP arrangements as part of its plenary authority over the terms and conditions of LEC/CMRS interconnection. As described below, this authority plainly extends to interconnection arrangements for traffic that is jurisdictionally intrastate. This plenary Commission authority — analogous to the Commission's authority to establish the terms and conditions of exchange access service for interstate communications under Section 201 of the Act — includes the authority to require the LECs to provide billing information to CMRS providers and, indeed, the authority to require the LECs to offer CMRS providers the option to have the LECs provide billing services on reasonable and non-discriminatory terms.

The Commission's authority to regulate the terms of LEC/CMRS interconnection arises primarily from Section 332(c)(1)(B) of the Communications Act. That Section provides:

> Upon reasonable request of any person providing [CMRS], the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of Section 201 of this Act. Except to the extent that the Commission is

[3] 120 F.3d 753 (8th Cir. 1997), *petition for certiorari pending.*

> required to respond to such a request, this subparagraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to this Act.

47 U.S.C. Section 332(c)(1)(B). Under this language, the scope of the Commission's authority under Section 201 is central to the analysis.

Even prior to the enactment of Section 332(c)(1)(B), the Commission had plenary authority under Section 201 to establish the terms on which carriers providing interstate telecommunications services connected to each other. Section 201(a) establishes "the duty of every common carrier in accordance with the orders of the Commission":

> to establish physical connections with other carriers, to establish through routes and charges applicable thereto and the divisions of such charges, and to establish and provide facilities and regulations for operating such through routes.

47 U.S.C. §201(a). The Commission has for more than two decades relied on its Section 201(a) authority to establish the terms and conditions under which LECs and other carriers must interconnect for handling interstate traffic.[4] Indeed, the Commission relied on Section 201 to establish the basic landline access charge regime under which landline LECs must provide billing data to, and bill for, interstate calls carried by interexchange carriers ("IXCs").[5] Nothing in Section 201 (or anywhere else in the Communications Act) suggests that the Commission lacks similarly broad authority in connection with interstate calls carried by CMRS providers.

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[4] *See, e.g. Bell System Tariff Offerings*, 46 F.C.C.2d 413, 417-30 (1974), *affirmed, Bell Telephone Company of Pennsylvania v. FCC*, 503 F.2d 1250, 1264-68 (3d Cir. 1974), *cert. denied*, 422 U.S. 1026 (1975).

[5] In the Matter of MTS and WATS Market Structure, *Third Report and Order*, 93 F.C.C.2d 214, 254-55 (¶¶ 36-41) (1983) ("*MTS.WATS Third Report*") (discussing Commission's authority to establish "carrier's carrier" access charges under Section 201).

The only real issue regarding the scope of the Commission's authority arises because most CMRS calls originate and terminate in the same state, and thus are not "interstate" communications under the terms of Section 3(22) of the Act.[6] As described below, the language and structure of the Act, the legislative history of relevant provisions, and the recent decision by the 8th Circuit in *Iowa Utilities Board v. FCC* all establish that the Commission may regulate the terms of LEC/CMRS interconnection irrespective of whether the traffic being exchanged is interstate or intrastate in nature.

At the outset, Section 332(c)(1)(B), the source of the Commission's specific authority with regard to LEC/CMRS interconnection, makes no distinction between "interstate" and "intrastate" CMRS calls. To the contrary, it simply says that the Commission "shall order" LEC/CMRS interconnection "pursuant to the provisions of Section 201." The only logical reading of this provision is that it applies equally to both interstate and intrastate CMRS traffic. Indeed, if it did not apply to both types of traffic, then Section 332(c)(1)(B) would have been entirely unnecessary. As noted above, at least since the early 1970s, the Commission has clearly held that it has the authority ***under Section 201*** to direct LECs to interconnect with other carriers for the purpose of facilitating the provision of interstate telecommunications services.[7] Section 332(c)(1)(B) would have been totally superfluous if the authority it conferred on the Commission to set the terms of LEC/CMRS interconnection were limited to interstate traffic.[8]

Other provisions of Section 332(c)(1)(B) confirm that Congress intended this law to expand the Commission's jurisdiction to include intrastate CMRS interconnection. Section

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[6] Section 3(22) of the Act, 47 U.S.C. § 153(22), defines "interstate communication." There is no corresponding definition of "intrastate communication" in the Act.

[7] *See, e.g., Bell System Tariff Offerings,* 46 F.C.C.2d 413, 417-30 (1974), *affirmed, Bell Telephone Company of Pennsylvania v. FCC,* 503 F.2d 1250, 1264-68 (3d Cir. 1974), *cert. denied,* 422 U.S. 1026 (1975).

[8] For this reason, and for the reasons discussed below, it would make no sense to import the limitation to interstate traffic included in Section 201 into the LEC/CMRS interconnection context under Section 332(c)(1)(B).

201, referred to in Section 332(c)(1)(B) as the provision "pursuant to" which the Commission should order interconnection, by its own terms (*i.e.*, without considering Section 332(c)(1)(B)) applies only to interstate traffic. Congress was apparently concerned that, except in connection with LEC/CMRS interconnection, Section 332 not be construed to expand the Commission's existing authority to order interconnection between carriers. Consequently, Congress stated that

> ***Except to the extent that the Commission is required to respond to*** [a CMRS interconnection request], this subparagraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to this Act.

47 U.S.C. §332(c)(1)(B) (emphasis added). The only rational interpretation of this phrase is that, to the extent that the Commission ***is*** required to deal with LEC/CMRS interconnection issues, "this subparagraph," *i.e.*, Section 332(c)(1)(B), ***does*** constitute an "expansion of the Commission's authority to order interconnection pursuant to this Act." Since the Commission's authority to order interconnection under Section 201 with regard to ***interstate*** communications (including interstate LEC/CMRS traffic) was unquestioned and unquestionable, the only "expansion" of Commission authority that could possibly have been intended is "expansion" to include the terms and conditions of interconnection for the exchange of intrastate traffic.[9]

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[9] This view of the expansive effect of Section 332(c)(1)(B) is borne out by the legislative history of that section. The final language of Section 332(c)(1)(B) is the language contained in the House Bill on this issue. On this point, the Conference Report states that the House Bill "requires in Section 332(c)(1)(B) that the Commission shall order a common carrier to establish interconnection with ***any person***" providing CMRS, and that "[n]othing here shall be construed to expand or limit the Commission's authority under section 201, ***except as this paragraph provides.***" House Conf. Rep. No. 103-213 (103rd Cong., 1st Sess.) (1993) ("*Conference Report*") at 490-91 (emphasis added). The language precluding interpretation of Section 332(c)(1)(B) as a ***limitation*** on Commission authority was necessary in order to avoid an interpretation that Section 332(c)(1)(B) was the ***only*** possible basis for Commission authority over LEC/CMRS interconnection issues. For example, under well-settled preemption law, if the Commission were to conclude that its federal policies regarding CMRS service (*e.g.*, encouraging the development of the service as a direct substitute for landline service) were being frustrated by state-level regulation of LEC/CMRS interconnection, the Commission has the authority to pre-empt contrary state regulation. Clearly, Congress wanted to ensure that the specific treatment of LEC/CMRS interconnection in Section 332(c)(1)(B) was not construed as limiting the Commission's general ability to assert authority over LEC/CMRS interconnection in a situation involving conflict between state and federal regulatory goals.

Clearly, therefore, Section 332(c)(1)(B) gives the Commission authority to establish the terms of all LEC/CMRS interconnection, including interconnection arrangements for ***intrastate*** traffic over which the Commission may possibly have lacked authority prior to the adoption of that statute. To the extent that this new authority constitutes an expansion of Commission authority, the express language of Section 332(c)(1)(B) plainly shows that Congress expected and accepted such a result.

One could quibble, however, and argue that, since Section 332(c)(1)(B) does not literally and expressly state that the Commission has authority over intrastate LEC/CMRS interconnection, any conclusion that the Commission has such authority is a "construction" of Section 332(c)(1)(B). In that case, the familiar rule of Section 2(b) of the Act — that no provision of the Act should be "construed to apply or to give the Commission jurisdiction with respect to" intrastate matters — might stand as a bar to treating the Commission's authority as broad enough to encompass intrastate traffic.

This concern, however, was anticipated — and fully resolved — by Congress. The same bill that enacted Section 332(c)(1)(B) also ***amended*** Section 2(b). Specifically, the introductory clause of Section 2(b) was amended to read, "[e]xcept as provided in sections 223 through 277, inclusive, ***and section 332***, ..."[10] Section 332(c)(1)(B), therefore, is exempt from the normal rule of construction that bans Commission authority over intrastate matters. The normal, natural reading of that statute to cover ***all*** LEC/CMRS interconnection arrangements, both inter- and intrastate, therefore, is clearly the correct one, because Section 2(b)'s rule of construction expressly does not apply to Section 332 — including Section 332(c)(1)(B).

A die-hard opponent of Commission authority over LEC/CMRS interconnection arrangements for intrastate traffic could possibly claim that the exception to Section 2(b) was "really" intended as a sort of "belt-and-suspenders" provision to make especially sure that the ban

[10] 47 U.S.C. § 152(b).

on state regulation of CMRS ***end user rates*** contained in Section 332(c)(3) was not set aside on the basis of Section 2(b). Any such claim would be plainly erroneous, however.

First, the amendment to Section 2(b) exempts ***all*** of Section 332 from the normal "no intrastate jurisdiction" rule, not just Section 332(c)(3). One would have to suppose that Congress suddenly and unaccountably became sloppy in drafting legislation in this highly sensitive area to conclude that when it exempted all of Section 332, it "really" only "meant" to exempt Section 332(c)(3).

Second, Section 332(c)(3) contains its own exemption. Specifically, in Section 332(c)(3)(A), Congress itself expressly stated that "***[n]otwithstanding sections 2(b)*** and 221(b), no State or local government shall have any authority to regulate the entry of or the rates charged by" any CMRS provider. In light of the emphasized language, no amendment to Section 2(b) is needed for Section 332(c)(3)(A). It would make no sense, therefore, read the actual Section 2(b) exemption, applicable to ***all*** of Section 332, to "really" only apply to the one portion of Section 332 for which no Section 2(b) exemption is needed at all.[11]

Third, the broad sweep of the Section 2(b) exemption for Section 332 is underscored by the legislative history of the amendment of Section 2(b) that brought the exception into being. The report of the Conference Committee regarding this question states as follows: "The Senate Amendment contains a technical amendment to Section 2(b) of the Communications Act ***to clarify that the Commission has the authority to regulate commercial***

[11] In this connection, the remainder of language from Section 332(c)(3)(B) just quoted — "no State or local government shall have any authority to regulate" CMRS rates and entry — is a plain congressional command that directly divests states of whatever regulatory authority in this area they might have previously had. No "construction" of the statute is necessary to achieve that result, so Section 2(b)'s "rule of construction" could never properly be applied to contradict Congress's plain language. Consequently, the only reasonable reading of the exemption from Section 2(b) is also the simplest and most natural: ***all*** of Section 332 — including Section 332(c)(1)(B) — is exempt from the normal rule of Section 2(b) banning "constructions" of the Act that give the Commission jurisdiction over intrastate matters.

mobile services. ... The Conference Agreement adopts the Senate position."[12] In other words, the overriding purpose of enacting the Section 332 amendments — which included Section 332(c)(1)(B) — was to place CMRS services, jurisdictionally, in essentially the same position as traditional interstate long distance services: squarely within the regulatory authority of the Commission, as opposed to the states.[13]

Finally, any residual doubt about the Commission's authority to regulate the terms of LEC/CMRS interconnection, including interconnection for the exchange of intrastate traffic, has been removed by the holding of the 8th Circuit's in *Iowa Utilities Board v. FCC*. The 8th Circuit panel in that case — clearly no supporter of broad Commission jurisdiction over intrastate matters — was nonetheless forced to admit that

> because section 332(c)(1)(B) gives the FCC authority to order LECs to interconnect with CMRS carriers, we believe that the Commission has the authority to issue rules of special concern to the CMRS providers [so that the Commission's interconnection rules regarding CMRS] remain in full force and effect with respect to CMRS providers, and our order of vacation does not apply to them in the CMRS context.[14]

In light of the overall perspective of the *Iowa Utilities Board* court on Commission jurisdiction over intrastate matters, it is hard to imagine a principled conclusion that the Commission's jurisdiction is even ***less*** extensive than that court was prepared to acknowledge.[15]

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[12] *Conference Report* at 497 (emphasis added).

[13] The only exceptions to plenary ***Commission*** regulatory authority regarding CMRS are (a) are the limited "other terms and conditions" of the CMRS offerings expressly reserved to state jurisdiction, and (b) the provisions for a state re-acquiring rate regulation authority of CMRS offerings if certain market conditions are met, both included in Section 332(c)(3)(A).

[14] *Iowa Utilities Board* at n.21.

[15] A final claim that opponents of Commission authority might raise is that Section 332(c)(1)(B) literally only gives the Commission authority to order physical interconnection arrangements, but not any payment or related terms associated with such arrangements, which (under this view) would remain with

(continued...)

In sum, several factors confirm that the Commission's authority regarding LEC/CMRS interconnection issues encompasses both jurisdictionally interstate and jurisdictionally intrastate communications. These include the plain language of Section 332(c)(1)(B), which does not limit the Commission's authority to interstate LEC/CMRS matters, and which expressly contemplates an expansion of the Commission's authority over interconnection matters; the plain language of Section 2(b), which exempts ***all*** of Section 332 from the rule against construing the Act to give the Commission jurisdiction over intrastate matters; the legislative history of both Section 332(c)(1)(B) and the Section 2(b) exemption, which make clear that Congress intended to give the Commission extensive authority to regulate all CMRS matters; and the 8th Circuit's ruling expressly holding that Section 332 gives the Commission authority to issue rules regarding intrastate LEC/CMRS interconnection issues.

Given that the Commission has jurisdiction over the terms and conditions of both interstate and intrastate LEC/CMRS interconnection, the remaining question is whether its authority encompasses the ability to order LECs to provide billing services. This is discussed in the next section.

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[15](...continued)
the states. The difficulty with this analysis is that it makes Section 332(c)(1)(B)'s reference to Section 201 totally superfluous. When Section 332(c)(1)(B) was enacted, Congress was of course aware that the Commission had established the entire interstate access charge regime — involving ***both*** physical interconnection requirements ***and*** associated payment arrangements — on the strength of Section 201. If Congress had meant to limit the Commission's CMRS interconnection authority to physical interconnection arrangements, it need only have stated in Section 332(c)(1)(B) that the Commission shall "order a common carrier to establish physical connections with" CMRS service, without any reference to Section 201. Instead, Congress included a broad reference to "the provisions of Section 201" "pursuant to" which physical interconnection "shall" be ordered, which on its face includes the rate-setting authority associated with physical interconnections contained in Section 201. In this regard, because Section 2(b) does not apply to Section 332(c)(1)(B), the natural, logical reading of that section — that the full scope of the Commission's Section 201 authority applicable to interstate interconnection arrangements now also applies to all LEC/CMRS interconnection arrangements — is clearly the reading that most comports with the language of the statute, as well as Congress's intent.

B. The Commission's Authority To Apply Section 201 To LEC/CMRS Interconnection Provides Ample Authority To Require LECs To Take The Steps Needed To Enable A "Calling Party Pays" Option For CMRS Providers.

Section 332(c)(1)(B) directs the Commission to require LECs to establish "physical connections" with CMRS providers "pursuant to the provisions of Section 201 of this Act." Section 201, of course, is the statutory basis upon which the Commission based the creation of interstate access service at the time of the divestiture of the Bell companies from AT&T, and earlier LEC/IXC interconnection arrangements. That is, the Commission had (and used) its authority under Section 201 to order the local Bell companies to establish physical connections with MCI and other competing interexchange carriers, and to establish the rates, charges, and other terms and conditions applicable to those physical connections.[16]

As noted above, Section 201(a) establishes "the duty of every common carrier in accordance with the orders of the Commission":

> to establish physical connections with other carriers, to establish through routes and charges applicable thereto and the divisions of such charges, and to establish and provide facilities and regulations for operating such through routes.

47 U.S.C. §201(a).

In establishing access charges for landline interexchange calls, the Commission specifically determined that a jointly-provided interexchange call was an example of a "through route" referred to in Section 201(a). As the Commission noted, a "through route" refers to a situation in which an end user receives the ability to call between two points utilizing the

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[16] *See* In the Matter of MTS and WATS Market Structure, *Third Report and Order*, 93 F.C.C.2d 214, 254-55 (¶¶ 36-41) (1983) ("*MTS.WATS Third Report*") (discussing Commission's authority to establish "carrier's carrier" access charges under Section 201).

facilities and services of more than one carrier.[17] A typical long distance call involves a "through route" arrangement between the originating LEC, the IXC, and the terminating LEC. Similarly, completion of a landline-to-CMRS call involves a "through route" between the landline LEC and the CMRS provider.

By virtue of Section 332(c)(1)(B) and the exemption in Section 2(b), Section 201(a) applies to LEC/CMRS arrangements for the exchange of both interstate and intrastate traffic. Section 201(a) gives the Commission complete authority regarding carrier-to-carrier through routes. The Commission may direct carriers "to establish through routes." The Commission may establish "charges applicable thereto."[18] And, perhaps most relevant here, the Commission may establish "the divisions of such charges" as between the participating carriers. This statutory authority allows the Commission to decide whether end users making a landline-to-CMRS call may be billed by the LEC, the CMRS provider, or both, and to determine how any amounts collected from the end user are to be divided up between the two carriers.

In the case of the "through routes" involved in landline long distance calling, the end user is billed by (or on behalf of) the IXC, which then remits access charges to the originating and terminating LECs. In the case of the "through routes" involved in landline-LEC-to-CMRS calls today, the landline LEC typically charges its end user any applicable local usage charges (which may be zero, or may involve a message unit or similar charge) for calling the CMRS customer, and then (pursuant to the Commission's local interconnection order addressed in the *Iowa Utilities Board* case) compensates the CMRS provider a small amount for terminating the call, while the CMRS provider receives additional compensation from the called party.[19]

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[17] *MTS/WATS Third Report* at nn. 15-16 and accompanying text.

[18] Of course, the strong policy against establishing rate regulation for CMRS calls in Section 332(c)(3) would apply to any end user charges for through route arrangements involving CMRS providers.

[19] In some cases today, if the point at which the LEC and the CMRS provider physically interconnect is far enough away from the landline customer originating the call, the landline LEC may also charge the end user an intraLATA toll rate. Moreover, some LECs offer arrangements by which the CMRS provider (continued...)

The Commission's broad Section 201 authority over the establishment of through routes and the division of any charges made for through route-related services clearly gives the Commission the authority to require LECs to establish a CPP option for CMRS providers. This would simply be one form of charging for the through route service — assess all of the cost (or, at least, more of the cost than is done today) on the calling party. Moreover, the Commission's authority in this regard would encompass both a requirement that the LEC generate and provide to the CMRS provider data sufficient for the CMRS provider to bill the end user and a requirement that the LEC itself include such charges in ***its*** bills on terms and conditions substantially the same as the LEC offers to interexchange carriers using the LEC to bill end users for long distance calls. This latter requirement would simply mirror the Commission's traditional exercise of jurisdiction over billing and collection practices of landline LECs in connection with landline interstate toll calls.

Any through route arrangement raises the question of compensating the participating carriers for their services in completing the "through route" call. Here, the question is how to divide total end user revenues (which, in a CPP arrangement, would be paid by the originating landline caller) between the LEC and the CMRS provider. Centennial suggests that the Commission's normal rules for interconnection arrangements under Section 251 should apply. If the call is an intra-MTA call, it should be treated as "local" as between the LEC and the CMRS provider, and the LEC should compensate the CMRS provider for terminating the call just like any other local call.[20] If the call is an inter-MTA call, it may be treated as a non-local call,

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[19](...continued)
may "buy down" these toll charges by paying additional compensation to the LEC for incoming calls that would otherwise be charged as intraLATA toll charges to the landline end user. All of these arrangements reflect different types of charging for jointly-provided service, and all of them are subject to the Commission's jurisdiction over LEC/CMRS "through routes."

[20] Under the logic of reciprocal compensation for local calls, it is assumed that the originating carrier (here, the LEC) will charge its end user a sufficient amount to cover the costs of terminating such calls. Unless the LEC affirmatively rebates its end users some portion of their local exchange service fees for intra-MTA calls terminated to a CMRS provider, the LEC will have charged its end user for completion of such a local call. Compensation to the CMRS provider would therefore be appropriate.

and — as under current LEC/CMRS interconnection rules — the LEC may assess the CMRS provider appropriate interstate or intrastate access charges.

C. The Commission Also Has Authority To Establish CPP Arrangements Under The Terms Of Section 332(c)(3)(B).

As the discussion above shows, the Commission's authority to require LECs to establish and support CPP arrangements is quite broad, and — by virtue of the application of Section 201(a) via Section 332(c)(1)(B) — applies to all LEC/CMRS interconnection arrangements, both interstate and intrastate. In addition, however, the Commission's recognized authority under Section 332(c)(3)(B) of the Communications Act to preempt states and exercise exclusive jurisdiction over CMRS rate and entry matters[21] is relevant as well. This is because permitting LECs to refuse to participate in CPP arrangements would frustrate the deregulatory intent of Section 332(c)(3)(B) and re-establish state regulatory authority through the back door.

From this perspective, a CPP arrangement for landline-originated calls to a CMRS customer is logically no different than the standard arrangement in place today for landline long distance calls. The rates for such calls are established by the long distance carrier (whether inter- or intrastate in nature). In the CPP context, the CMRS provider would be establishing a "rate" for calls that use its network, chargeable to the end user initiating the call. If a CMRS provider cannot establish such rates on a deregulated basis, from which regulator should the CMRS provider ask permission? Section 332(c)(3)(B)'s ban on state-level rate regulation of CMRS services clearly shows that the ***states*** lack authority to regulate such rates. General jurisdiction over this question, therefore, must lie with this Commission.[22]

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[21] *See, e.g., CPP NOI* at ¶ 27, *citing* 47 U.S.C. § 332(c).

[22] As noted above, when Congress amended Section 2(b) to include an exception for all of Section 332, it stated that the purpose of adding the exception was "***to clarify that the Commission has the authority to regulate commercial mobile services.***" *See* note 12, *supra*, and accompanying text.

Assuming that the Commission were to conclude that the public interest would be served by allowing CMRS providers to establish a CPP option — a policy decision within the jurisdiction of the Commission, as just discussed — it would totally frustrate that conclusion if LECs were permitted to thumb their noses at the Commission by refusing to provide billing data, billing services, or similar support functions for most of the affected calls (*i.e.*, the calls that are "intrastate" in the traditional sense of originating and terminating within a single state). The only possible basis for such a LEC position would be that the functions at issue relate to "intrastate" services. Preventing the LECs from sitting on their hands as a way to avoid CPP, therefore, would constitute an exercise of the Commission's normal and well-established authority to pre-empt state rules or policies that frustrate the achievement of federal goals.[23]

III. TECHNICAL PROBLEMS WITH CPP COULD MAKE CUSTOMERS WARY OF WIRELESS AND REDUCE CUSTOMER CALLING.

Although Centennial supports CPP as an option, Centennial is concerned that CPP might be detrimental to the development of wireless services as a viable competitor to landline services. Moreover, the Commission should evaluate whether current technical difficulties in implementing CPP might inhibit calling to and from CMRS customers, rather than promote and expand competition in the local exchange market. Centennial recommends that the Commission address unresolved problems such as call routing, billing, customer notification and number portability before CMRS providers offer CPP as an option. Indeed, given the extreme complexity of offering CPP on a national basis, Centennial recommends that the Commission approve CPP for implementation and evaluation on a local basis only.

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[23] While it is possible to base Commission authority on such an analysis, Centennial submits that such a course is more convoluted than necessary in light of the direct authority provided to the Commission regarding LEC/CMRS interconnection under Section 332(c)(1)(B) and Section 201, which freely and properly applies to intrastate traffic. Centennial urges the Commission in further pronouncements in this proceeding (for example, a Notice of Proposed Rulemaking) to expressly adopt the jurisdictional analysis contained in Section I.B of these Comments.

A. CPP Billing Problems Start With Call Routing.

Call routing for CPP could create major billing problems for CMRS providers. Experts disagree about where in the call set-up process the network should recognize that CPP applies. The choices are the LEC's originating switch, an IXC's intermediate switch (for incoming calls from distant areas) or the CMRS provider's terminating switch. The designated CPP switch must generate the data needed to bill the caller, and the carrier owning that switch must either do so (and forward to other carriers the an appropriate portion of the billed revenue) or forward billing data to the CMRS provider so that the CMRS provider may bill.

Each switch that might perform this function poses potential billing problems for CMRS providers. If the originating switch is selected, then every CMRS provider that seeks to implement CPP must have a billing agreement with all possible originating carriers. If the intermediate switch is selected, then CMRS providers will need billing agreements with all possible IXCs. If a call reaches the CMRS provider's switch before CPP has been invoked, it could create an enormous administrative burden on CMRS providers. Indeed, such an arrangement would potentially require the CMRS provider to be able to bill calls originating from any telephone in the United States.

If billing arrangements do not work, there will be problems for both customers and carriers. Countless billing arrangements will need to be established or altered by CMRS providers in order to implement CPP. The possibilities for error in these billing arrangements are plentiful. If billing problems are pervasive, they may inhibit, rather than promote additional customer use of wireless services. People may hesitate to call CMRS customers if they are uncertain of the amount of money they will be charged, or if they fear outlandish overcharges. The Commission should consider these matters before authorizing or requiring CPP.

B. CPP Has The Potential To Impede Local Number Portability And Frustrate Callers.

The Commission should assure that creating a CPP option does not limit or impede local number portability. The widely-accepted Local Routing Number ("LRN") number portability method a database dip as part of the call path. This database dip determines whether or not a call should be ported to another carrier than the carrier associated with the dialed number for call routing purposes. Currently, only wireline providers must provide number portability. However, under current requirements, in the relatively near future, all cellular, broadband PCS and covered SMR providers must also possess the capability to query number portability databases nationwide.[24]

Any switching and billing arrangements for CPP would need to be coordinated with the requirements of LRN for number portability. If number portability does not mesh with CPP, it could result in many frustrated customers as calls are mis-routed or mis-billed. If such a frustrating situation persists, the effect could be to reduce wireless calling rather than to stimulate it. Therefore, Centennial recommends that the Commission develop an industry solution for deploying CPP and preserving local number portability.

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[24] In the Commission's First Memorandum Opinion and Order on Reconsideration addressing Local Number Portability that was issued on March 6, 1997, the Commission reaffirmed its requirement that all cellular, broadband PCS, and covered SMR providers must possess the capability to query number portability databases nationwide (or have agreements in place with other carriers to conduct the queries for them) to deliver calls to ported numbers by December 31, 1998. The Order also clarified that all cellular, broadband PCS and covered SMR providers must be able to offer service provider portability within the 100 largest MSAs in switches for which another carrier has made a specific request by June 30, 1999. All cellular, broadband PCS, and covered SMR providers must also be able to support roaming nationwide by this date. *In the Matter of Telephone Number Portability, First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 7236, 7309-7317 (1997).

C. The Expense Of CPP May Outweigh Its Benefit To Many CMRS Providers.

Before establishing a CPP option, the Commission should try to identify and quantify the costs such an option would likely impose on CMRS providers. A lack of hard data will make it difficult for CMRS providers to make a reasoned business decision about whether to offer a CPP option. Unfortunately, many of the costs of establishing a CPP option would likely be costs incurred by carriers other than the CMRS providers themselves (*e.g.*, costs that landline LECs would incur, and reasonably seek to recover from CMRS providers, for recording billing information and/or billing and collecting for CPP calls). As a result, it will be difficult for CMRS providers to assess whether it makes economic sense to offer CPP until the Commission's review of this matter is further developed.

Moreover, it may be hard to estimate even the CMRS provider's own costs, such as the costs of any necessary switch upgrades. In addition, customer billing issues and complaints may increase once CPP is implemented in a particular area. Additional customer complaints may require additional customer service staffing. Customers may question why CPP rates for a roaming mobile call are much higher than for calls within a service area. Wireless providers will have to explain to customers why, for roaming mobile calls, CPP rates may have to include daily access fees and toll calls. To advise customers about these additional charges, wireless providers must devise special customer notification programs. CPP customer notification programs will create additional business expenses.

Finally, CPP call "leakage" from coin, operator handled, calling card, public telephones and hotel telephones could create a situation where CMRS providers that have implemented the CPP option will not receive compensation for all calls. The Commission should address how, if CPP is adopted as an option, calls from payphones, hotels, prisons and other locations that will not accept billing can be routed so that CMRS providers will not end up absorbing the costs of these unbilled and unpaid calls. This is another technical challenge to implementing CPP that will be translated into dollars and cents for CMRS providers. Simply

stated, CMRS providers need as much information as possible about the real costs of implementing CPP as an option.

IV. CONCLUSION.

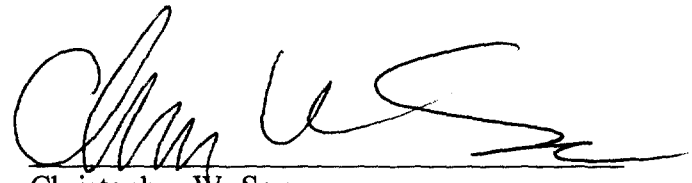
The Commission plainly has jurisdiction to require LECs to take the steps needed to allow CMRS providers to implement a calling party pays option. While this conclusion is clear from the text and legislative history of Section 332, Section 2(b), and Section 201 of the Act, it is confirmed by the recent decision by the 8th Circuit court of appeals regarding the scope of the Commission's authority to enact interconnection rules relating to CMRS providers. Section 332(c)(1)(B) directs the Commission to apply the requirements of Section 201 — the primary statutory basis on which the Commission imposed carrier-to-carrier access charges — to LEC/CMRS interconnection. It follows that the Commission may (as with traditional access charges) require the LECs to provide information the CMRS providers would need to implement a CPP option, and, indeed, to bill end users on behalf of CMRS providers on a non-discriminatory basis. The Commission's authority over carrier-to-carrier arrangements for "through routes" under Section 201 would also allow the Commission to protect end users against unreasonable efforts by LECs to impose excessive or duplicative charges on end users who make calls to CMRS providers.

The fact that the Commission has broad authority in this area, however, does not mean that it should exercise that authority broadly. Centennial is concerned that CPP will not be well-accepted in the marketplace, except in limited circumstances. Moreover, there are a number of potential technical problems with actually implementing a CPP option that caution

against either mandating that a CPP option be available from LECs or requiring CMRS providers to offer a CPP option to their customers.

Respectfully submitted,

CENTENNIAL CELLULAR CORP.

By: 

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Dated: December 16, 1997